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GENERAL COUNSEL'S OPINION NUMBER 58-7, DATED 10 DECEMBER 1958

An individual under military detail to the Agency may properly be paid per diem in lieu of subsistence under the Joint Travel Regulations and a supplemental per diem for representational purposes under Agency Regulations provided the latter allowance is required for reasons of security, cover or operational efficiency.

TO CHIEF, FINANCE DIVISION

1. We have your memorandum of 3 November on the above subject describing a situation in which a military detail traveling abroad under the Joint Travel Regulations was authorized a supplemental per diem for representational purposes under Agency Regulation [REDACTED]. You question the propriety of this authorization, noting that the Audit Staff has taken exception to it under [REDACTED].

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2. Paragraph 5h(1) of Regulation [REDACTED] states:

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"Military personnel assigned to the Agency shall be entitled to that per diem allowance that is allowed by their parent military organization. Civilian per diem allowances in lieu of military per diem allowances may be authorized for military personnel only in those instances in which security requirements, operational assignments, or cover circumstances so require. However, no combination of parent service entitlements and civilian entitlements shall be authorized. (See [REDACTED]) Letters of authorization and travel orders shall be construed to authorize the applicable per diem allowance of the parent service unless specifically stated otherwise."

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Paragraph 1a of Regulation [REDACTED] states:

"Military personnel serving with the Central Intelligence Agency are entitled only to the pay, allowances, and other monetary benefits to which they would be entitled were they serving their parent service at the same post of assignment. However, detailed military personnel may be authorized, at the discretion of this Agency, travel, transportation, and OTHER allowance entitlements of civilian personnel of the Agency, in lieu of the CORRESPONDING entitlements of the parent service PROVIDED THAT NO COMBINATION OF THESE LATTER PARENT SERVICE ENTITLEMENTS AND CIVILIAN ENTITLEMENTS SHALL BE AUTHORIZED. The basic consideration in granting any of the entitlements of civilian personnel is that the individual will incur substantial personal expenses as the direct result of his operational assignment or cover circumstances which he should not be expected to bear from his military entitlements."

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Further, paragraph 2b of Regulation [] states:

"Military personnel serving outside the continental limits of the United States under cover or operational circumstances which necessarily result in the incurrence of living or quarters expenses in excess of those considered normal to a military officer serving his parent service at the same post of duty may be authorized any of the normal or special allowances which would be authorized a civilian engaged by CIA for similar duties in lieu of the applicable military allowances. Specific exclusions from this authority are the Foreign Post Differentials, Territorial Post Differentials, and Separation and Transfer Allowances." (Emphasis ours.)

3. The problem, as can be seen from the above, is reduced to a question of whether "per diem" under [] and "supplemental per diem" under [] are of the same substantive class of emoluments so that payment of one under the Joint Travel Regulations and the other under Agency Regulations would be a violation of the above-quoted prohibition of [] against combinations of "corresponding" civilian and military entitlements. For this question we look not to the name applied to the emolument but to its ultimate purpose.

4. Representation, the enhancement of personal prestige, may take the form of modes of dressing, dining, traveling, or any of a host of other attentions to the superficialities of the customs and needs of life. In all of these, it is not the mode of the representation but the purpose of it which gives it its essential character. For this reason, although representational funds might be used to cover unusual expenditures for clothing, food, means of conveyance, etc., they should not be viewed as for expenditures for those particular types of activity but rather as sui generis for a unique purpose which is, not the satisfaction of the employee's ordinary needs, but the satisfaction of the Agency's extraordinary need to have the employee appear in a certain way in order to establish rapport with persons to whom this appearance is important, and which rapport contributes to the accomplishment of the mission. Although supplemental per diem is in the same idiom as per diem, we consider the purpose of the two so different as to make them not "corresponding" within the meaning of []. We think this view is strengthened by the fact that the Joint Travel Regulations, Part H, paragraph 4350 et seq., provides for a special per diem which has a rationale similar to that of the Agency's supplemental per diem under []. The civilian per diem would correspond to the military per diem, and the civilian supplemental per diem would correspond to the military supplemental per diem.

5. For the reasons above, we are of the opinion that a military detail may be paid per diem (in lieu of subsistence) under the Joint Travel Regulations and supplemental per diem (for representational purposes) under [] simultaneously without violation of the requirements of [] and [], assuming, of course, that the allowance is required by circumstances of security, cover, or operational efficiency.

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6. In the instant case, if the officer certifies as to the actual excessive subsistence expenditures and the reasons for incurring them, and the amounts and the reasons are acceptable, and the other requirements of the appropriate regulations are met, he may be paid the actual subsistence costs incurred, not to exceed the maximum authorized.

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